

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MCEWAN ENTERPRISES INC.**

Applicant

**RESPONDING MOTION RECORD
(Returnable October 15, 2021)**

October 14, 2021

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SUPERIOR COURT OF JUSTICE
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Applicant

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(as at October 1, 2021)**

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Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
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Applicant

I N D E X

| Tab | Description |
|-----------------|---|
| 1. | Affidavit of Sayan Navaratnam, sworn October 14, 2021 |
| Exhibits | |
| A | Letter from Miller Thomson LLP dated October 12, 2021 |
| B | Letter from Miller Thomson LLP dated October 13, 2021 |

TAB 1

Court File No. CV-21-00669445-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT
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Applicant

**AFFIDAVIT OF SAYAN NAVARATNAM
(sworn October 14, 2021)**

I, Sayan Navaratnam, of the City of Richmond Hill, in the Province of Ontario,

MAKE OATH AND SAY:

1. I have reviewed with my counsel the application record filed by McEwan Enterprises Inc. ("**MEI**") in these *Companies' Creditors Arrangement Act* ("**CCAA**") proceedings, including the affidavit of Dennis Mark McEwan sworn on October 1, 2021, and the First Report of Alvarez & Marsal Canada in its capacity as the Court-appointed Monitor of MEI (in such capacity, the "**Monitor**"). I have knowledge of the facts to which I depose. Where this affidavit is on information and belief, I have stated the source of that information and believe it to be true.

2. I am a businessman and have successfully started, managed, sold and acquired multiple ventures. I have experience acquiring distressed assets through Canadian insolvency proceedings, most recently in the food delivery industry.

3. Through media publicity, I learned that MEI recently commenced insolvency proceedings. In my experience, distressed assets are often marketed for sale in the context of insolvency proceedings.

4. I believe that there would be synergies between my business interests and MEI's iconic brand and reputation in the Toronto restaurant scene, so, after learning about the CCAA proceedings, I contacted my lawyers and asked them to express my interest in participating in any sale process for MEI's assets.

5. I understand from my counsel that MEI has entered into an agreement of purchase and sale (the "**Sale Agreement**") with 2864785 Ontario Corp. (the "**Purchaser**"), a new entity owned by the current shareholders of MEI, for the purchase and sale of substantially all of the assets of MEI, except for certain excluded assets (the "**Sale Transaction**"), and MEI seeks approval of the Sale Transaction at this motion. I understand that MEI does not intend to run a sale process in these CCAA proceedings and has not tried to market its assets to a third party.

6. On October 12, 2021, my counsel sent a letter to the Monitor, among other things, expressing:

- (a) my interest in purchasing MEI's assets should a sale process be conducted;
- (b) my interest in participating constructively in any sales process with a view to submitting a winning bid;
- (c) my willingness and financial wherewithal to submit a competitive bid for some or all of MEI's assets (including the assets excluded by the Sale Agreement) for consideration that exceeds the purchase price contemplated in the Sale Agreement;

- (d) that Mr. McEwan's continued involvement in the business may not be necessary as a condition to an offer submitted by our client in an open sale process; and
- (e) that interim financing for MEI's operations, on the same terms as the Transaction Deposit (as defined in the Sale Agreement), and for the administration costs of a sale process, could be provided.
7. A copy of my counsel's October 12 letter to the Monitor is attached as **Exhibit "A"** to this affidavit.
8. I am advised by Mr. Ward of Miller Thomson that Miller Thomson, the Monitor and its counsel had a telephone call on October 13, 2021 in response to the October 12 Letter. Following that telephone call, my counsel sent another letter to the Monitor:
- (a) confirming my interest in acquiring MEI's assets;
- (b) expressing my willingness to provide the Monitor and MEI with whatever additional information or disclosures they may reasonably require to better establish my ability to compete successfully in a court-supervised sale process; and
- (c) seeking an opportunity to address any specific outstanding concerns that the Monitor may have with respect to my desire to compete for and acquire the MEI Assets.
9. A copy of my counsel's October 13 letter to the Monitor is attached as **Exhibit "B"** to this affidavit.

SWORN by Sayan Navaratnam of the City of Richmond Hill, in the Province of Ontario, before me at the Town of Milton, in the Province of Ontario, on October 14, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

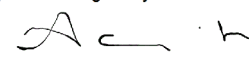
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A Commissioner for Administering Affidavits
ASIM IQBAL

DocuSigned by:



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Sayan Navaratnam

This is **Exhibit “A”** referred to in the Affidavit
of **Sayan Navaratnam** and SWORN BEFORE ME via video-
conference with the deponent in the City of Richmond Hill,
Ontario, and the Commissioner in the Town of Milton,
Ontario this 14th day of October, 2021

DocuSigned by:



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A Commissioner for Taking Affidavits
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October 12, 2021

Private and Confidential

David Ward
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Sent via Email: zweigs@bennettjones.com

Bennett Jones LLP
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Toronto, Ontario
M5X 1A4 Canada

Attention: Sean Zweig

Dear Mr. Zweig:

Re: In re McEwan Enterprises Inc.

We are counsel for Sayan Navaratnam (or a nominee corporation). Our client is a liquid, serial entrepreneur with substantial resources that has successfully started, managed, sold and acquired multiple ventures, including distressed assets.

We understand that McEwan Enterprises Inc. ("**MEI**" or the "**Company**") commenced proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA**") on September 28, 2021, and Alvarez & Marsal Canada Inc. was appointed as the Monitor of MEI (in such capacity, the "**Monitor**"). We also understand that you are counsel to the Monitor.

In reviewing the court materials posted on the Monitor's website, it appears that MEI has entered into an agreement of purchase and sale (the "**Sale Agreement**") with 2864785 Ontario Corp. (the "**Purchaser**"), a new entity owned by the current shareholders of MEI, for the purchase and sale of substantially all of the assets of MEI, except for certain Excluded Assets (as defined in the Sale Agreement) (the "**Sale Transaction**").

We also understand that MEI does not intend to run a formal sale and investment solicitation process within the CCAA proceedings. Rather, on October 15, 2021, MEI seeks an order of the Court approving the Sale Transaction and vesting in the Purchaser all right and title in the Purchased Assets (as defined in the Sale Agreement) free and clear of all encumbrances.

We write this letter to express our client's keen interest in purchasing MEI's assets, including the Excluded Assets. MEI's restaurants and locations are a valuable and iconic brand in the Toronto restaurant scene, and our client will participate constructively in any insolvency sales process with a view to submitting a winning bid.

Given the opportunity to conduct the basic due diligence that is typically afforded to bidders in an open and competitive CCAA sale process, our client has the willingness and wherewithal to submit a competitive bid for some or all of MEI's assets (including the

Excluded Assets) for consideration that exceeds the purchase price contemplated by the Sale Agreement. Our client advises that Mr. McEwan's continued involvement may not be necessary as a condition to any transaction with our client. Our client can also provide MEI with interim financing on terms substantially the same as the Transaction Deposit (as defined in the Sale Agreement) to fund MEI's operations during the CCAA proceedings (including funding the costs of a sale process).

We would be happy to make ourselves or our client available to the Monitor to further discuss and/or demonstrate our client's interest in and wherewithal to pursue and close a transaction in short order. We will do our best to respond promptly to any inquiries or information requests the Monitor or the Company may wish to make to establish the seriousness of this approach.

Thank you for your prompt attention. We look forward to hearing from you and/or the appropriate representatives of MEI as soon as possible and we would be grateful if the Monitor would coordinate in this regard.

We expect to receive instructions to attend the hearing on October 15, 2021 and would appreciate receiving the customary calendar invite with the Zoom link. Kindly add us to the Service List as well as counsel for Mr. Navaratnam.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in black ink, appearing to be 'DW' with a large, stylized loop and a horizontal stroke extending to the right.

For:

David Ward
DW/AI



This is **Exhibit “B”** referred to in the Affidavit
of **Sayan Navaratnam** and SWORN BEFORE ME via video-
conference with the deponent in the City of Richmond Hill,
Ontario, and the Commissioner in the Town of Milton,
Ontario this 14th day of October, 2021

DocuSigned by:



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A Commissioner for Taking Affidavits

ASIM IQBAL



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October 13, 2021

Private and Confidential

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3400 One First Canadian Place
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Toronto, Ontario
M5X 1A4 Canada

Attention: Sean Zweig

Dear Mr. Zweig:

Re: In re McEwan Enterprises Inc.

Thank you for the call this morning in response to our letter of October 12, 2021.

We understand that the Monitor will shortly be filing a report in respect of considerations relevant to the applicant's motion for court approval of its proposed transaction.

We accordingly take this opportunity to reiterate important points that we ask be given appropriate consideration in terms of the process going forward.

First, our client, Mr. Sayan Navaratnam, has a sincere interest in acquiring the MEI assets. The assets have significant synergies with other assets within our client's investment portfolio.

Second, in addition to such interest, our client has the motivation and the financial wherewithal to pursue and close a transaction for consideration that is greater than the Sale Agreement. We are instructed to work with you and MEI to this end. While Mr. Navaratnam's preference is also to work with Mr. McEwan, our client's interest in the MEI assets is not contingent on Mr. McEwan's continued involvement in the business.

Third, Mr. Navaratnam stands willing to provide you, the company, or the court with whatever additional information or disclosures as may be reasonably required to further or better establish his ability to compete successfully in a court-supervised sale process. As part of this exchange of information, he looks forward to an opportunity to complete usual and customary due diligence and participate constructively in a sale or investment solicitation process.

Finally, from our client's perspective, the purpose of this morning's call was to attempt to address the totality of the Monitor's concerns as it relates to the efficacy of a sale process. We believe we have done so. However, if there are any other specific concerns that the Monitor believes we have not addressed and that go to the efficacy of a sale process we would appreciate clearly understanding those concerns in advance of the hearing on Friday.

We would be grateful if the Monitor would include fair reference to these points and our related correspondence in its monitor's report.

We anticipate receiving instructions to attend the October 15 hearing to participate as appropriate, including in terms of being available to answer questions from parties.

Yours truly,

MILLER THOMSON LLP

Per:

A handwritten signature in blue ink that reads "David Ward". The signature is written in a cursive, flowing style.

David Ward
DW/AI



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Proceeding commenced at Toronto

**AFFIDAVIT OF SAYAN NAVARATNAM
(SWORN OCTOBER 14, 2021)**

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